

**COMMERCIAL GROUND TRANSPORTATION
OPERATOR AGREEMENT**

BETWEEN

CITY OF RAPID CITY RAPID CITY REGIONAL AIRPORT BOARD

AND

**COMMERCIAL GROUND TRANSPORTATION OPERATOR
AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND _____**

THIS COMMERCIAL GROUND TRANSPORTATION OPERATOR AGREEMENT BETWEEN THE CITY OF RAPID CITY AND _____ (“Agreement”) is made as of _____, 2023, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, by and through the Rapid City Regional Airport Board, 4550 Terminal Road, Suite 102, Rapid City, SD 57703 (hereinafter referred to as “Board”) and _____, a corporation organized under the laws of _____, and having a principal address of _____ (“Operator”). The Board and Operator may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

The Parties recite and declare that:

A. The City of Rapid City is the owner and operator of an airport known as the Rapid City Regional Airport in Rapid City, South Dakota.

B. Pursuant to SDCL 9-35-11, the City or Rapid City is “empowered and vested with exclusive jurisdiction to license, regulate, prescribe just and reasonable rates and charges, fix the routes of travel and the speed and point for stops, of all motor carriers of passengers, operators of taxicabs and motor buses conducting operations in such municipality.”

C. The Rapid City Regional Airport Board is empowered and authorized to grant concessions at the Airport.

D. By operation of Rapid City Municipal Code Section 13.28.070, the sale of goods and services at the Airport requires prior approval of the Rapid City Regional Airport Board.

E. The Board has adopted Commercial Ground Transportation Rules and Regulations, and the Board is authorized to impose rates and charges for its costs to accommodate commercial businesses operating at the Airport and for the privilege of conducting business at the Airport.

F. Operator is a Commercial Ground Transportation Operator (GTO) and provides for ground transportation services from one location to another by providing the service(s) itself or through another GTO by contract.

G. Operator has been granted a Commercial Ground Transportation Operator Permit by the Board, and Board agrees to allow Operator to conduct its business at the Airport, subject, however, to the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

A. “Airport” as used herein shall mean the Rapid City Regional Airport located in the City of Rapid City, Pennington County, South Dakota.

B. “Commencement Date” as used herein shall mean the date on which all of the following conditions precedent are satisfied, in Board’s sole judgment:

- i. Board shall have received and approved of an Operator Permit and payment of applicable permit fee(s); and
- ii. Board shall have received certificates evidencing that Operator has obtained all insurance required by this Agreement.

C. “Designated Areas” as used herein shall mean the areas of the Airport that are marked and designated for commercial ground transportation as designated in the Board’s Commercial Ground Transportation Rules and Regulations, which may be amended from time to time. Designated Areas are clearly marked by the Board and are subject to change at any time.

D. “Director” as used herein shall mean the Executive Director of the Airport, as may be designated from time to time by the Board.

E. “Safety Issue” as used herein shall mean any condition, practice or violation that causes a substantial probability of physical harm, property loss, security violation, and/or environmental impact.

F. “Terminal” as used herein is the passenger Terminal Building at the Airport, as it now exists or as may be hereafter altered or expanded.

G. “Trip” as used herein shall mean each instance in which one of Operator’s vehicles enters Airport property and makes one or more stops to pick up or drop off one or more passengers on Airport property.

2. CONCESSION RIGHTS GRANTED, TERMS, AND CONDITIONS

A. The Board hereby grants to Operator the right to operate its commercial ground transportation vehicles, for-hire, in common with others so authorized, in the Designated Areas only for the uses specified in this Agreement, subject to and conditioned upon all the terms and conditions included or referred to in this Agreement. Operator shall not conduct any activity or operations at the Airport not expressly authorized by this Agreement. Operator is subject to all Airport Rules and Regulations, Commercial Ground Transportation Rules and Regulations, policies, and procedures, as established by the Board and as may be amended from time to time. Operator shall comply with

the directives of the Director concerning the safe, secure and efficient use of the Airport. Nothing in this Agreement shall be construed as granting or creating any license or franchise rights pursuant to any federal, state or local laws, rules or regulations. Operator shall maintain insurance for its commercial ground transportation vehicles in accordance with state financial responsibility requirements at all times.

B. Operator shall have the non-exclusive rights of ingress and egress across Airport property to conduct its permitted operations hereunder, provided that such ingress and egress activity: (a) shall not impede or interfere, in any way, with the operation of the Airport by Board or the use of the Airport by its tenants, passengers or employees; (b) shall be on roadways, and other areas designated by Board from time to time; and (c) may be temporarily suspended by Board in the event of an emergency or a threat to the Airport during the time period of such emergency or threat. Operator shall use the most direct authorized route to pick up and drop off its customers at Designated Areas at the Airport.

C. Operator acknowledges and agrees that: (a) Board shall have the right, at all times, to change, alter and expand the Airport, including the terminals, roadways and designated pick-up, drop-off and staging areas; and (b) Board has made no representations, warranties and/or covenants to Operator regarding the design, construction, passenger or automobile traffic, or views of the Airport. Without limiting the generality of the foregoing, Operator acknowledges and agrees that: the Airport may from time to time undergo renovation, construction and other Airport modifications; and the Board may from time to time adopt rules and regulations relating to security or other operational matters that may affect Operator's business.

D. Operator accepts the Designated Areas and the Airport in their present condition and "as-is", without representation or warranty of any kind, and subject to all applicable laws, ordinances, rules and regulations.

E. Operator agrees that it will not have an office or station at the terminal area of the Airport, or have an office or station on the Airport or other leasehold sites on the Airport without an approved rental agreement with the Board.

F. Operator shall limit its vehicles' curbside time to the area designated for their operation. If the designated area is already full with vehicles, Operator shall wait in other designated areas until a position opens.

G. Operator shall comply with all Rapid City Municipal Code requirements. Operator shall pay all taxes, fees, licenses and moneys required by the federal government, the State of South Dakota, and the City of Rapid City for its operations at the Airport.

3. TERM

A. The term of this Agreement shall start on the Commencement Date of August 1, 2023, and expire December 31, 2025, unless sooner terminated or canceled

as hereinafter provided. It will automatically renew annually for successive periods of one year upon Board approval of an annual Operator Permit, unless either party provides written notice of its intent not to renew the term of this Agreement to the other Party at least sixty days prior to the end of the current term. This Agreement may otherwise be amended, cancelled, or terminated as provided in this document.

B. This Agreement is not subject to hold-over. The Board reserves all rights to take action against Operator for trespass or otherwise should Operator continue to operate its commercial ground transportation vehicles, for-hire, on public roadways on Airport property upon the expiration or earlier termination or cancellation of this Agreement.

4. PAYMENT REQUIREMENTS AND REPORTS

A. In exchange for the privileges granted to Operator, Operator agrees to pay a monthly Ground Transportation User Fee (“User Fee”) to the Board as established by the Board through its published Rates and Charges, as may be amended from time to time. The User Fee is due, in full, by the tenth (10th) day of the month for the preceding month. All payments hereunder, including User Fees, shall be paid at the office of the Board, or at such other place or manner as Board may designate in writing. If the 10th day of the month is a Saturday, Sunday or Federal holiday, payment shall be due on the following business day.

B. Operator shall also submit its operations report (“Monthly Activity Report”) by the tenth (10th) day of the month for the preceding month. The Monthly Activity Report shall be in an agreed-upon electronic format (as specified by Director), and shall contain the total number of Trips for the reporting period. All such information shall be accurate at all times. The Monthly Activity Report shall be signed by an authorized official of Operator.

C. Any and all payments due to the Board and paid by check by Operator shall be remitted to the following address: Rapid City Regional Airport, 4550 Terminal Road, Suite 102, Rapid City, SD 57703.

D. No demand for the Monthly Fee need at any time be given. In the event Operator fails to pay the Monthly Fee as required under the provisions of this Agreement after the payments become due, 1.5% per month (18% APR) interest shall be assessed on any past due balances that are more than 30 days overdue. The implementation of this provision shall not preclude the Board from terminating this Agreement for default in the payment of rents, fees or charges, or from enforcing any other provisions contained herein or pursuing any other remedy allowed by law and/or equity.

5. BOOKS AND RECORDS

A. Operator agrees to maintain and make available (in physical or electronic form) to Board at Operator’s place of business or a mutually agreed upon third party location, during regular business hours, accurate and detailed books and accounting

records reflecting its performance of its obligations under Section 4 of this Agreement. Operator shall use either reasonable efforts to work towards maintaining such books and records in accordance with generally accepted accounting principles (“GAAP”), or shall actually maintain in accordance with GAAP, unless otherwise agreed to by the Board. Upon Board’s reasonable prior written request, which shall not occur more than once per calendar year, Operator shall permit the Board to audit and examine such books and records relating to its performance of its obligations under Section 4 of this Agreement at Operator’s place of business or a mutually agreed upon third party location. Operator shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the expiration of this Agreement or the last date of operations at the Airport, whichever is later.

B. Should any examination, inspection and audit of Operator’s books and records by the Board disclose an underpayment by Operator of the consideration due, Operator shall promptly pay Board the amount of such underpayment. If said underpayment exceeds three percent (3%) of the consideration due, Operator shall reimburse the Board for all reasonable costs incurred in the conduct of such examination, inspection and audit. Additionally, if said underpayment exceeds three percent (3%) of the consideration due, Operator shall pay said underpayment with interest thereon at 18% per annum, from the date such additional fees became due, which is the day underreporting commenced.

6. NO EXCLUSIVITY

Operator acknowledges and agrees that it has no exclusive rights to conduct the business described herein, and that Board has the right, at all times, to arrange with others for similar activities at the Airport.

7. PROHIBITED ACTIVITY

A. No Driver shall post or display, on the exterior of any Driver vehicle, any signage or other displays except for Operator’s name and/or logo. Any display must be professional, clean and legible.

B. Without limiting any other provision herein, Operator shall not, without the Board’s prior written consent: (a) cause or permit anything to be done, in or about the Designated Areas or the Airport, or bring or keep anything thereon, which would be reasonably likely to (i) increase, in any way, the rate of fire insurance on the Airport, (ii) create a nuisance, or (iii) obstruct or interfere with the rights of others on the Airport or injure or annoy them; (b) commit, or suffer to be committed, any waste upon the Designated Areas or the Airport; (c) use, or allow the Designated Areas to be used, for any improper, immoral, unlawful or reasonably objectionable purpose; (d) place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within or adjacent to the Designated Areas or the roadways; or (e) do, or permit to be done, anything, in any way, which would be reasonably likely to materially injure the reputation or image of the Board or appearance of the Airport.

C. Without limiting the generality of other provisions of this Agreement, Operator will not: (a) Allow operation of one of its vehicles on Airport roadways by an unauthorized driver; (b) Transport a passenger in an unauthorized vehicle; (c) Pick up or discharge passengers, or their baggage, at any location other than the Designated Areas; (d) Fail to provide information, or provide false information, to police officers or Airport personnel; (e) Allow any of its drivers to possess any opened alcoholic beverage while on duty on Airport property; (f) Operate a vehicle in an unsafe manner; (g) Fail to comply with posted speed limits and traffic control signs; (h) Attempt to solicit payment in excess of that authorized by law; (i) Solicit any activity prohibited by the applicable laws, rules or regulations; (j) Operate a vehicle that is not in a safe mechanical condition or which lacks mandatory safety equipment; (k) Disconnect any pollution control equipment on its vehicles; and (l) Allow any of its drivers to possess any illegal drug or narcotic while on Airport property.

8. INDEMNITY

Operator shall indemnify, hold harmless and defend the Board, its elected officials, appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Operator's conduct of business or from any activity or other things done, permitted, or suffered by Operator in, or about the Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Board, its elected officials, appointed officials, agents and employees, provided that the Board shall give Operator prompt notice of any such claim or actions made or filed against it. The provisions of this section shall survive the expiration or early termination or cancellation of this Agreement and Operator's obligations hereunder shall remain effective notwithstanding such termination, cancellation or expiration with respect to any loss, injury or damage enumerated within this section for which Operator has an obligation of indemnification, irrespective of whether the notice or claim is initiated prior to or subsequent to expiration of this Agreement or Operator's termination or cancellation hereunder. Nothing herein shall be construed as extending or modifying the statute of limitations pertaining to such claim under applicable law.

9. INSURANCE

A. Operator shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below, and insurance shall be placed with companies or underwriters authorized to do business in the State of South Dakota and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard commercial general liability covering all operations of Operator at the Airport and shall include, but not be limited to, general commercial liability; automobile including owned, non-owned, leased and hired; contractual coverage, including the indemnification obligations of this Agreement; and independent contractors'

coverage. The Board, its elected officials, appointed officials, agents and employees, shall be included as additional insureds with respect to Operator’s use of the Airport. Operator shall, promptly after execution of this Agreement, furnish to the Board appropriate certificates of insurance evidencing coverage effected and to be maintained for the term of this Agreement. The following are minimum limits of occurrence-based insurance coverage for the duration of this Agreement:

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A.1. Worker’s Compensation Employer’s Liability	Statutory \$500,000/\$500,000/\$500,000
A.2. Comprehensive General Liability (Including Contractual Liability And Completed Operations) Bodily Injury and Property Damage General Aggregate	\$1,000,000 each occurrence \$2,000,000
A.3. Commercial Automobile Liability	\$1,000,000 combined single limit

B. The insurance policies shall not be subject to cancellation or material change except after notice to the Board at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written notice of renewal shall be furnished to the Board at least thirty (30) days prior to expiration of any policy during the term of this Agreement. Upon written request by the Board, Operator shall permit the Board to inspect the originals of all applicable policies. The Board, its elected officials, appointed officials, agents and employees, shall be included as additional insureds with respect to Operator’s use of the Airport.

C. The insurance requirements of this Section shall be subject to periodic adjustments by the Board.

D. Compliance with the foregoing requirements does not relieve Operator of its liability under any portion of this Agreement.

10. TAXES

Operator shall be liable for and pay when due all taxes and assessments of every kind and nature that may arise by virtue of the execution of this Agreement. Operator shall be responsible for payment of any statutory tax or other fiscal obligations imposed by applicable, local, state or federal laws with respect to Operator’s agents, employees, or Operator’s property, occupancy of, or other activities on the Airport. Nothing herein shall prevent Operator from protesting through due process, any taxes levied.

11. RIGHTS OF THE BOARD

A. The Board reserves the right to direct, in its sole discretion, all activities of Operator at the Airport in the event of an emergency.

B. The Board reserves the right to direct, at its discretion, Operator's operations in the event that Operator's operations are unreasonably interfering with the use by others of the Airport; including to restrict the use of roadways, curbs, and sidewalks in favor of the traveling public.

C. The Board reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including existing vehicle and pedestrian traffic patterns, as the Board deems appropriate without interference or hindrance by Operator, and the Board shall have no liability hereunder to Operator by reason of any interruption to Operator's operations occasioned by such Board activities.

D. The Board reserves the right to establish and enforce rules and regulations for the conduct of activities and uses permitted herein.

E. The Board reserves the right, for itself and local law enforcement officers, to inspect Operator's vehicles as to passenger access, registration, the driver's license to drive, license tag, insurance, and other matters pertaining to the legal, efficient and safe operation of Operator's vehicles at the Airport.

12. GOVERNMENT RESERVATIONS AND RESTRICTIONS

The rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

A. During time of war or national emergency, the Board shall have the right to lease the landing area or any part thereof to the United States government for military or naval use and, if such lease agreement is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government shall be suspended.

B. This Agreement shall be subordinate to the provisions of any other existing or future agreement between the United States Government and the Board relative to the use, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the operation, maintenance of the Airport now or in the future.

13. ADDITIONAL OBLIGATIONS OF OPERATOR

Operator hereby covenants and agrees:

A. That Operator will evaluate the safety of its vehicles used on Airport property by checking Vehicle Identification Numbers for safety recalls and determining whether the title is branded.

B. That the vehicles used at the Airport shall be maintained in good, safe and operative order, free from mechanical defects, and in a clean, neat and attractive condition, inside and outside.

C. That Operator's drivers performing services at the Airport shall not conduct business in a loud, noisy, boisterous, offensive, or objectionable manner.

D. That Operator shall observe and comply with any and all applicable Airport, federal, state and local laws, statutes, ordinances, regulations and standards and shall abide by and be subject to all rules and regulations which are now, or may, from time to time, be promulgated by the Board concerning management, operation or use of the Airport.

E. That Operator shall meet all expenses in connection with its operation at the Airport, and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Operator, and that it will secure all such permits and licenses.

F. The Board shall be the sole and final judge of the quality and the adequacy of the services furnished by Operator as specified herein. In the event the Board determines that Operator has failed to comply with the requirements hereunder with respect to the quality and adequacy of its services, the Board may, upon thirty (30) days written notice, exercise its right to terminate this Agreement. However, the Board may, in its sole discretion, extend the time for compliance if, in its opinion, Operator is making progress in complying with the requirements of this Agreement.

14. TERMINATION FOR CONVENIENCE

This Agreement may be terminated by the Board, without cause, upon thirty (30) days' written notice to Operator. This Agreement may be terminated by Operator, without cause, if Operator is not in default of any terms of this Agreement or in the payment of the Monthly Fee or any other payments due to the Board, upon thirty (30) days' written notice to the Board. In the event any such notice of termination is given, the termination of this Agreement will be effective thirty (30) calendar days from the date of the notice or such date set forth in the notice of termination if greater than thirty (30) days.

15. BOARD'S RIGHT OF CANCELLATION

A. Notwithstanding other provisions in this Agreement, whenever the nonpayment of any sum or sums due hereunder continues for a period of ten (10) calendar days after the due date for such payments, the Board shall have the right to cancel this Agreement if the Board provides written notice to Operator of such nonpayment and Operator does not make the required payment within fourteen (14) calendar days following the date of service of such notice.

B. The Board shall have the right to revoke an Operator Permit and cancel this Agreement as per the conditions in the Commercial Ground Transportation Rules and Regulations.

C. Notwithstanding other provisions in this Agreement, the Board reserves the right to immediately suspend Operator from providing services at the Airport if Operator's conduct creates a Safety Issue. In such event, the Board will notify Operator of such suspension and Board may terminate this Agreement immediately at its discretion without giving Operator an opportunity to cure.

D. In addition to any conditions as specified herein and all other remedies available to the Board, this Agreement shall be subject to cancellation by the Board should any one or more of the following occur:

- i. If Operator shall file a voluntary petition in bankruptcy, or proceedings in bankruptcy shall be instituted against Operator and Operator is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of Operator and its assets pursuant to proceeding brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for Operator's assets is appointed, or if Operator shall be divested of its rights, powers and privileges under this Agreement by other operation of law and such proceeding is not dismissed within sixty (60) days of filing.
- ii. If Operator shall vacate, abandon, or discontinue for thirty (30) consecutive days the conduct and operation of its services at the Airport, except when such abandonment is caused by fire, earthquake, war, strike or other calamity beyond Operator's control.
- iii. If Operator shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, or the Board has a reasonable basis to believe Operator will fail in the same, or Operator engages in conduct or activity detrimental to the operations of the Airport, provided that upon the happening of any contingency recited in this Section or a reasonable basis to believe any such contingency will happen, Operator shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of such notice, the default, breach or complaint has not been corrected in a manner satisfactory to the Board, then and in such event, this Agreement and all of Operator's rights under this Agreement shall automatically terminate. The Board shall extend the time period to correct the default, if, in its sole opinion, due diligence is shown by Operator in curing the default.
- iv. The discovery by the Board that any financial or background information or statement provided to the Board by Operator, or any agent, representative, successor, grantee, or assign of Operator, was materially false.

16. OPERATOR'S RIGHT OF CANCELLATION

In addition to all other remedies available to Operator, this Agreement shall be subject to cancellation by Operator should any one or more of the following occur:

A. The permanent abandonment of the Airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation.

C. The breach by the Board of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Board and the failure to remedy such breach for a period of sixty (60) days after written notice from Operator of the existence of such breach.

D. The assumption of the United States government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict Operator from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

17. ASSIGNMENT AND SUBCONTRACTING

Operator shall not assign or transfer this Agreement or any interest herein, nor shall this Agreement, nor any interest therein, be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of the Board. Such consent shall provide that the assignment or transfer is in compliance with this Agreement, and provided further that any assignee shall possess sufficient experience and financial capacity to ensure compliance with all of the terms and conditions of this Agreement.

18. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. LEGAL CLAIMS AND ATTORNEY FEES

A. Each Party shall promptly report to the other any claim or suit against it arising out of or in connection with Operator's operation at the Airport. The Board and Operator shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and

accepted by the other party. Operator is an independent contractor in every respect, and not the agent of the Board.

B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any concession Fee or other charge payable by Operator, this Agreement or the breach of any covenant or condition of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal.

20. RECITALS

The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

21. PERFORMANCE BY BOARD

If Operator should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of the User Fees and other charges, the Board may, at its sole option and after giving written notice to Operator, perform such act on behalf of Operator. Upon notification to Operator of the cost thereof by the Board, Operator shall promptly pay the Board the amount due.

22. CIVIL RIGHTS NONDISCRIMINATION AND OTHER FEDERAL REQUIREMENTS

Operator shall comply with all obligations imposed by the Federal government as set forth in Exhibit "A," including such non-discrimination obligations.

23. ENTIRE AGREEMENT; AMENDMENTS

This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements whether written or oral. This Agreement may not be altered, modified or changed in any manner except by a writing signed by both parties.

24. RELATIONSHIP OF THE BOARD AND OPERATOR

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners. No provision contained in this Agreement nor any acts of Operator and the Board shall be deemed to create any relationship other than that of Operator and the Board.

25. NON-WAIVER OF BREACH

The waiving of any of the covenants of this Agreement by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches

of such covenants. The consent by the Board to any act by Operator requiring Board's consent shall not be deemed to waive consent to any subsequent similar act by Operator.

26. SURVIVAL OF INDEMNITIES

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Operator shall, at the Board's option, defend the Board at Operator's expense by counsel satisfactory to the Board.

27. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of South Dakota. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the Seventh Judicial Circuit of the State of South Dakota, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the Parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

28. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, emailed, or if sent by overnight courier or certified mail, to the last address furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

BOARD: Executive Director
Rapid City Regional Airport
4550 Terminal Road, Suite 102
Rapid City, SD 57703
toni.broom@rcgov.org

OPERATOR: _____
Attn: _____

Email: _____

The date of service of such notice shall be upon date email was sent, personal delivery, one (1) day after such notice is deposited with reliable overnight courier, or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

29. TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

30. PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provisions of this Agreement.

31. AUTHORITY OF OPERATOR’S REPRESENTATIVE

As an inducement to the Board to execute this Agreement, the undersigned representative of Operator represents that he/she is expressly authorized to execute this Agreement and to bind Operator to the terms and conditions hereof and acknowledge that the Board is relying upon this representation, authorization and execution.

32. CONSTRUCTION

The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any Party. The Parties agree that each Party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

33. CHOICE OF LAW

This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of South Dakota, without regard for its choice-of-law principles.

**CITY OF RAPID CITY
RAPID CITY REGIONAL AIRPORT BOARD**

NAME OF OPERATOR

By: _____
Dustin Dale, Board President

By: _____, Title

Attest:

Date: _____

By: _____
Bob Conway, Board Secretary

Date: _____

EXHIBIT 'A'

CIVIL RIGHTS NON-DISCRIMINATION

1. Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Operator transfers its obligation to another, the transferee is obligated in the same manner as Operator. This provision obligates Operator for the period during which the property is used or possessed by Operator and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
2. During the performance of this Agreement, Operator for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:
 - A. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - B. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964);
 - C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - D. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.); as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
 - F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - G. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

I. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

3. Operator, including personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Operator will use the premises in compliance with all other requirements imposed by or pursuant to the list of nondiscrimination acts and authorities, as enumerated in the preceding subsection. In the event of a breach of any of the above nondiscrimination covenants, the Board will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Agreement had never been made or issued.

4. During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest, agrees as follows:

A. Nondiscrimination: Operator with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

B. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Operator for work to be performed under a subcontract, including procurements of

materials, or leases of equipment, each potential subcontractor or supplier will be notified by Operator of contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities.

C. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Board or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Operator will so certify to the Board or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

D. Sanctions for Noncompliance: In the event of Operator's noncompliance with the non-discrimination provisions in this Agreement, the Board will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Agreement, in whole or in part.

E. Incorporation of Provisions: Operator will include the provisions of this subsection in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Operator will take action with respect to any subcontract or procurement as the Board or the FASA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Operator may request the Board to enter into any litigation to protect the interest of the Board. In addition, Operator may request the United States to enter into the litigation to protect the interest of the United States.